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Letter dated 18 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 12 April 2002 (S/2002/459).

The Counter-Terrorism Committee has received the attached supplementary report from New Zealand, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 10 July 2002 from the Permanent Representative of New Zealand to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

On behalf of my Government, I have the honour to transmit to the Counter-Terrorism Committee a supplementary report to the report transmitted to the Committee on 24 December 2001, providing additional information on the measures taken by New Zealand to implement the provisions of Security Council resolution 1373 (2001) as requested by the Committee on 18 April 2002.

My Government remains ready to provide the Committee with any further information as may be required or requested by the Committee.

(*Signed*) Don **MacKay**
Permanent Representative

Enclosure

Supplementary report providing additional information on the measures taken by New Zealand to implement the provisions of Security Council resolution 1373 (2001)*

New Zealand is fully committed to combating international terrorism in all its forms and to co-operating with the United Nations, its Member States and particularly with the Counter-Terrorism Committee established by the Security Council pursuant to Resolution 1373 to combat international terrorism.

In December 2001 New Zealand submitted a report to the United Nations Security Council Counter-Terrorism Committee setting out steps New Zealand had taken to implement, and in accordance with, United Nations Security Council Resolution 1373 (2001). On 18 April 2002 New Zealand was asked by the Counter-Terrorism Committee to provide further information on issues addressed in the report.

The following information is provided in response to the Counter-Terrorism Committee's request.

Counter-Terrorism Committee question : Sub-paragraph 1 (a)

The report states that New Zealand will be in compliance with "most of the Special Recommendations on Terrorist Financing" of the Financial Task Force on Money Laundering (FATF) once the Terrorism Suppression Bill has entered into force. Please indicate which of the recommendations will remain to be complied with and explain why this is the case.

Pending the passage of the Terrorism Suppression Bill (formerly the Terrorism (Bombings and Financing) Bill) New Zealand is close to full compliance with the terrorist financing aspects of United Nations Security Council Resolution 1373 and FATF Special Recommendations I–V on Terrorist Financing. On enactment of that bill it is anticipated that New Zealand will be fully compliant with the relevant requirements of Resolution 1373 and FATF recommendations I-V.

Regarding Special Recommendation VI (relating to alternative remittance), while New Zealand does not have any licensing or registration system for informal money remitters, the activity of such persons is captured within the provisions of the Financial Transactions Reporting Act 1996. Under this Act, an individual in the business of money or funds transfer is caught by section 3(k)(v), and has to comply with the requirements for customer verification, suspicious transaction reporting and record keeping. Whether a person is in the business of money or funds transfer (or it is a principal part of the person's business) will be a matter of fact to be determined on a case-by-case basis (whether licensed or not, or mainstream or underground). These provisions meet a key objective behind the recommendation of making such networks subject to the requirements of the anti-money laundering and anti-terrorist financing regime.

Regarding Special Recommendation VII (relating to wire transfers), while New Zealand may not comply with a literal interpretation of this recommendation in practice New Zealand meets its object. The New Zealand Government does not have legislation that sets out the appropriate guidelines for financial institutions making funds transfers as such guidelines are normally developed by industry groups. Those financial institutions belonging to the SWIFT system are required to meet its guidelines and these are likely to be revised to address this Special Recommendation.

* The annexes are on file with the Secretariat and are available for consultation.

New Zealand has not reached a final view on compliance with Special Recommendation VIII (relating to non-profit organisations) as it is awaiting clarification from FATF on the exact requirements that the recommendation imposes on member states.

Government agencies are continuing work on assessing what further measures may be necessary and desirable to ensure greater compliance with the requirements of Recommendations VI-VIII, taking into account their overall objectives and the extent of flexibility allowed to states to use different mechanisms where these can achieve the desired objective.

Please provide progress reports on the Terrorism Suppression Bill and the second terrorism bill to be introduced in Parliament in 2002.

The Terrorism (Bombings and Financing) Bill (now renamed the Terrorism Suppression Bill) was introduced to Parliament in April 2001. After the Security Council adopted Resolution 1373, the Government decided to amend the bill to include additional provisions to implement key aspects of the Resolution.

In accordance with normal Parliamentary procedures, the parliamentary Select Committee that was considering the bill sought public submissions on the new provisions and held public hearings in January 2002. Over the following two months the committee considered what further amendments should be made to the bill in light of the concerns expressed in the public submissions. Many of these concerns related to the nature and scope of the offences, the definition of "terrorist act", and the need to ensure that the proposed measures did not adversely impact on fundamental human rights. The amended bill was reported back to Parliament in late March and is currently awaiting its second reading.

New Zealand will hold a general election on 27 July 2002 and, as a result, Parliament has stopped sitting. Many bills, including the Terrorism Suppression Bill have been carried over to the new Parliament. It must meet by late September, although may well resume at an earlier date. It will now be some months before the Terrorism Suppression Bill can be passed.

When it became apparent last year that there would be some delays in passing the bill, regulations were made under the United Nations Act 1946. The UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 were intended to be a short-term measure to ensure New Zealand compliance with key aspects of Resolution 1373 in the period before the bill became law. The regulations were due to expire on 30 June 2002, as it was thought the bill would be passed by then. However, due to the election it has recently been necessary to extend the regulations. They now expire on 31 December 2002, with the date again being chosen in the expectation that the bill will be passed by then.

A Terrorism (Counter-terrorism) Bill is currently being drafted, to pick up on those parts of Resolution 1373 not dealt with by the Terrorism Suppression Bill. The second bill will pick up issues such as the harboring of terrorists, hoaxes and the listing of terrorist activity as an aggravating factor for purposes of the sentencing of persons charged with crimes carried out for a terrorist purpose. Once drafting is completed final Cabinet approvals will be sought for introduction to Parliament later this year.

Counter-Terrorism Committee question : Sub-paragraph 1 (c)

The report states that the new Terrorism Suppression Bill will contain an obligation to report suspicious transactions to the Police. Will this obligation extend to financial intermediaries outside the main financial sector (e.g lawyers)? If so, what are the penalties proposed if such persons omit to report either wilfully or by negligence?

Clause 17R of the Terrorism Suppression Bill includes an obligation to report suspected terrorist property to the Police. The provision is based on a similar provision in the Financial Transactions Reporting Act 1996 which relates to the reporting of suspicious financial transactions in the context of money laundering and the proceeds of

crime. The Terrorism Bill has used the definition of the term "financial institution" found in section 3 of the Financial Transactions Reporting Act, which therefore includes a wide range of entities. That section states that lawyers fall within the section "to the extent that the lawyer receives funds in the course of that person's business for the purposes of deposit or investment; or for the purpose of settling real estate transactions".

However, because Resolution 1373 prohibits dealings in property generally (not just financial transactions), the reporting obligation in the bill is more extensive than that in the Financial Transactions Reporting Act and applies not only to financial institutions but also to any person who suspects, on reasonable grounds, that particular property in their possession or control, is or may be property to which the section applies (i.e. belonging or linked to individuals or groups that have been designated as "terrorist entities"). The bill goes on to prescribe the contents of the report that must be made to the New Zealand Police and the manner in which it is to be submitted, with the requirements differing slightly according to whether or not the person reporting is a financial institution.

A person who knowingly fails to report suspicious property commits an offence for which the maximum penalty is imprisonment for one year. A fine can also be imposed in the case of a financial institution but the bill does not prescribe the maximum amount.

It should also be noted that the UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 currently imposes a similar obligation to report suspected terrorist property to the New Zealand Police.

Counter-Terrorism Committee question : Sub-paragraph 1 (d)

How does the financial tracking system ensure that funds received by associations are not diverted from their stated purposes, in particular, to terrorist activities?

Financial institutions in New Zealand are required to adhere to "know your customer" principles in accordance with the provisions of the Financial Transactions Reporting Act 1996. Accordingly, where associations maintain bank or other accounts the flow of funds in and out of those accounts will be subject to ongoing due diligence scrutiny by the relevant New Zealand financial institution. Moreover, scrutiny of these types of accounts is likely to be relatively stringent because of the nature of associations and the ordinary banking risks that they pose. These risks exist because the accounts are operated with multi-signatories, who are acting on behalf of an organization that normally does not have significant assets and where the financial institution must be assured about the legitimate authority of those issuing payment instructions on the account.

Accordingly, payments into the accounts not related to the usual activities of an association of that type, (i.e transfers overseas or large scale cash withdrawals) are likely to be construed as out of the ordinary and therefore potentially suspicious. As noted above financial institutions have a current obligation under the UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 to report to the New Zealand Police anyone they suspect may be holding funds linked to designated terrorists.

More generally financial institutions are required under the Financial Transactions Reporting Act to report any transactions that they suspect as being linked to money laundering to the New Zealand Police. Therefore, the New Zealand financial system places reliance on "know your customer" principles to monitor account activity to ensure that funds in those accounts are not diverted to terrorist activities.

Charitable organizations diverting funds to terrorist activities would be caught by the regimes under both the existing regulations and the Terrorism Suppression Bill. This issue will, however, be further considered in the context of the Working Group on Charities which is currently looking at the possible establishment of a Charities Commission which will keep general oversight of all charity related issues.

Counter-Terrorism Committee question : Sub-paragraph 2(a)

Please describe the mechanism under domestic law that prevents weapons from being supplied to terrorists within New Zealand.

The Terrorism Suppression Bill will provide that any form of property for designated terrorist entities (or associated entities) will be prohibited, which includes the supply of weapons.

Pending the passing of the Bill, the current relevant legislative prohibition depends on the nature of the weapon concerned. For example, the sale, ownership or carriage of firearms is tightly restricted under the terms of the Arms Act 1983. The process for vetting applicants for a firearms licence involves background inquiries by New Zealand Police as to the suitability of the applicant (i.e fit and proper person test). An applicant for a licence to supply firearms is subject to additional scrutiny. Similar checks are conducted concerning the supply of explosive substances. Possession of an offensive weapon, as defined in statute, is prohibited by the terms of the Crimes Act 1961, as is the supply.

The New Zealand Nuclear Weapon Free Zone, Disarmament and Arms Control Act implements the Nuclear Non-Proliferation Treaty (NPT) 1968 and the Biological Weapons Convention 1972. Under s 5 of this Act it is an offence for any New Zealand citizen or person ordinarily resident in New Zealand to manufacture, acquire, or possess, or have control over any nuclear device, or to aid, abet, or procure any person to manufacture, acquire, possess, or have control over any nuclear device within the New Zealand Nuclear Free Zone. Additionally, no New Zealand citizen or resident who is a servant or agent of the Crown may engage in any of these activities beyond the New Zealand Nuclear Free Zone. It is also an offence under s 8 for any person to manufacture, station, acquire, or possess, or have control over any biological weapon in the New Zealand Nuclear Free Zone.

The Chemical Weapons (Prohibition) Act 1996 implements the Chemical Weapons Convention 1993 (CWC) and it is an offence under this act to develop, produce, acquire, stockpile or retain chemical weapons. In addition, the Act applies extraterritorially to all New Zealand citizens and persons ordinarily resident in New Zealand. It also establishes a system of monitoring and verification for activities with certain toxic chemicals and their precursors as well as setting up a domestic permit system for all imports and exports of scheduled chemicals and precursors.

Legislation implementing the 1979 Convention on the Physical Protection of Nuclear Materials currently being worked on will further strengthen existing legislation by creating crimes related to the unlawful possession, use or transfer of nuclear material, and use or threat of use of it in a terrorist act.

Counter-Terrorism Committee question : Sub-paragraph 2(b)

What is the mechanism for inter-agency cooperation between the authorities responsible for narcotics control, financial tracking and security, with particular regard to border controls preventing the movement of terrorists?

New Zealand has mechanisms for inter-agency cooperation with authorities responsible for narcotic control, financial tracking and security.

Firstly, the New Zealand Police, which is a unified national Police service and responsible for coordinating New Zealand's law enforcement response to terrorism, coordinates a National Drug Intelligence Bureau (NDIB). The NDIB is jointly staffed by the New Zealand Customs Service and Police, and provides national coordination of illicit drug related matters. Police and Customs work closely with the Ministry of Health on the structure of regulations for controlling misuse of drugs.

The NDIB forms part of the National Bureau of Criminal Intelligence (NBCI). Police have recently established another unit within the NBCI namely the Strategic Intelligence Unit. This unit will have as one of its roles a focus on counter terrorist intelligence.

In relation to financial tracking, New Zealand is a member of both the Financial Action Taskforce on Money Laundering and the Asia Pacific Group on Money Laundering. It is one of the few jurisdictions that has established a Financial Intelligence Unit (FIU) with the Police, which reflects both the ability of the Police to undertake this role, and perhaps the economies of scale within New Zealand: New Zealand is an island nation some 2000 kilometres from its nearest neighbour and has a population of just 3.8 million. New Zealand has a small financial sector that is dominated by five main trading banks, and these in turn have a sound working relationship with the FIU. According to legislation, the definition of "financial institution" includes remittance agents, who are therefore subject to the anti-money laundering regime set in place by the Financial Transaction Reporting act 1995.

In addition to the two matters set out above, New Zealand has established a Combined Law Agency Group (CLAG) that meets at a regional and national level. This group includes departmental officials from both the Immigration and the Internal Affairs Departments. A strong coordination is maintained between officials responsible for the movement of people across New Zealand's border and other law enforcement officials.

Matters that have a 'security' concern are focused on by the Domestic and External Security Secretariat (DESS), which is a part of the Department of Prime Minister and Cabinet. DESS is responsible for coordinating New Zealand's response to security issues, including terrorism related matters. Coordination covers a range of government agencies, including the New Zealand Security Intelligence Service and Police.

Counter-Terrorism Committee question : Sub-paragraph 2(c)

Please provide an outline of and, if possible, an internet reference for, the law in which the "extradite or prosecute" obligations have been enacted in order to implement the anti-terrorism treaties to which New Zealand is a party.

New Zealand is currently party to 9 of the 13 terrorism conventions and protocols. (New Zealand regards the Convention on the Safety of United Nations and Associated Personnel as falling within this group.)

Terrorism involving aircraft

New Zealand is party to all four instruments dealing with terrorism involving aircraft:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)
- the Convention for the Suppression of Unlawful Seizure of Aircraft (1970);
- the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971); and
- the Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988)

The implementing legislation for these instruments is the Aviation Crimes Act 1972 (as amended in 1999). To assess how the "extradite or prosecute" rule has been implemented it is necessary to look at the offences themselves and the provisions relating to jurisdiction and extradition. The Aviation Crimes Act makes the conduct proscribed by the various instruments a crime under New Zealand law. However, certain jurisdictional limits apply to prosecutions involving conduct that occurs wholly outside New Zealand. In addition, before a prosecution can commence the consent of the Attorney-General is required. The relevant provisions are as follows:

(a) Hijacking (section 3)

This section makes hijacking an offence punishable by life imprisonment under New Zealand law in relation to aircraft in flight in or outside New Zealand. However, section 9(1) states that New Zealand courts do not have jurisdiction where both the place of take-off and the place of actual landing of the aircraft (not being a New Zealand aircraft) are in the territory of the country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless one of four exceptions applies. The two that are relevant to the "extradite or prosecute" rule are those giving extraterritorial jurisdiction over an alleged offender who is either a New Zealand national or resident or present in New Zealand.

New Zealand's Extradition Act 1999 allows the extradition of a person for any offence that carries a penalty of 12 months imprisonment or more. As noted further below New Zealand no longer requires extradition treaties in order to extradite to non-Commonwealth countries. Where, however, New Zealand has an extradition treaty with a State that is party to the Hijacking Convention, the offence of hijacking is deemed, for the purposes of New Zealand's domestic law, to be included in the bilateral treaty (section 7(1)).

(b) Crimes committed in connection with hijacking (section 4)

This offence applies to crimes committed on board an aircraft in flight outside New Zealand that would be a crime, if committed within New Zealand. The maximum penalty is that which would have applied, had the particular crime been committed in New Zealand.

(c) Other crimes relating to aircraft (section 5)

This offence relates to specified acts done in or outside New Zealand involving aircraft (for example, committing an act of violence on board an aircraft which is likely to endanger the aircraft or destroying an aircraft in service). The maximum penalty is 14 years imprisonment. The jurisdiction provisions are the same as those for hijacking, with the New Zealand courts having extraterritorial jurisdiction over an alleged offender who either is a New Zealand national or resident or is present in New Zealand (section 9(2)). Like hijacking this offence is deemed, for the purposes of New Zealand's domestic law, to be included in bilateral extradition treaties with other States Parties to the relevant Convention (section 7(2)).

(d) Crimes relating to international airports (section 5A)

This offence, which applies to certain acts done in or outside New Zealand that endanger or are likely to endanger the safety of an international airport, carries a maximum penalty of 14 years imprisonment, with life imprisonment being the maximum if the conduct also amounts to murder or manslaughter. New Zealand courts have jurisdiction in relation to conduct that occurred wholly outside New Zealand if the alleged offender is present in New Zealand (section 9A). This offence is deemed, for the purposes of New Zealand's domestic law, to be included in bilateral extradition treaties with other parties to the Montreal Protocol (section 7A(1)).

(e) Taking firearms, explosives etc onto an aircraft (section 11)

This offence, which carries a maximum penalty of 5 years imprisonment, relates to the taking of firearms or other offensive weapons on board aircraft. There are no special rules on jurisdiction or extradition for this offence, which is derived from the 1963 Convention.

Terrorism involving ships and fixed platforms

In 1999, New Zealand became party to the Rome Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988) and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf.

The implementing legislation for these instruments is the Maritime Crimes Act 1999 which follows a similar structure to the Aviation Crimes Act. It creates two sets of offences, crimes relating to ships (section 4) and crimes relating to fixed platforms (section 5), both of which carry a maximum penalty of 14 years imprisonment, with life imprisonment being the maximum if the conduct also amounts to murder or manslaughter. The Act provides for New Zealand courts to have jurisdiction in respect of conduct that occurs wholly outside New Zealand in certain circumstances, including where the alleged offender is present in New Zealand (section 9). Section 17 provides that no proceedings can be instituted in any court without the consent of the Attorney-General. As under the Aviation Crimes Act, the Maritime Crimes Act deems these offences to be included in bilateral extradition treaties with other States Parties to the Convention or Protocol.

Terrorist acts against persons

New Zealand is a party to all three conventions involving terrorist acts against persons:

- the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (1973);
- the Convention Against the Taking of Hostages (1979); and
- the Convention on the Safety of United Nations and Associated Personnel (1994)

The implementing legislation for these conventions is the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980. The Act was amended in 1998 to encompass the UN Personnel Convention.

The 1980 Act follows the similar structure to the other legislation and creates the following crimes:

- crimes against international protected persons and UN and associated personnel whether in New Zealand or elsewhere (section 3). The maximum penalty is the same as for that conduct under New Zealand's general criminal law;
- crimes against premises or vehicles of a protected person whether in New Zealand or elsewhere (section 4);
- threats against such persons, premises or property whether in New Zealand or elsewhere (sections 5 and 6). The maximum penalty is 7 years imprisonment.
- hostage taking in or outside New Zealand (section 8). The maximum penalty is 14 years imprisonment.

There are no additional relevant jurisdictional provisions that limit the circumstances in which a person present in New Zealand who is not extradited could be prosecuted. However, the Attorney-General's consent is required to any prosecution for these crimes. Section 10 deems these crimes to be included in bilateral extradition treaties with States Parties.

(The Committee asks for internet references to the implementing legislation relating to "extradite or prosecute" obligations. New Zealand is in the process of establishing a comprehensive database for its legislation. At present there is only a somewhat rudimentary website on which legislation may be viewed without cost: www.gplegislation.co.nz (access each individual statute by its name).)

Counter-Terrorism Committee question : Sub-paragraph 2(f)

What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or other support of terrorist acts is required to be met and how long, on average, does it actually take in practice to implement such a request in New Zealand?

There is no 'legal' timeframe within which a request from New Zealand for foreign assistance with respect to a terrorist matter must be met. Similarly, there is no legal timeframe within which New Zealand must respond to a request. The circumstances and exigencies of the particular case will determine the timeframe within which the request is fulfilled. Where a request is made to New Zealand for assistance in an investigation or criminal proceeding concerning terrorism, the New Zealand authorities would treat the request as a matter of priority and would endeavour to respond to the request as soon as is practicably possible.

How long a request of any sort takes to implement will depend on the complexity of the request and the nature of the help sought. It could take a couple of days longer to process a formal mutual assistance request as opposed to an informal one. This reflects the fact that, where a formal request is made and dealt with under the Mutual Assistance in Criminal Matters Act 1992, certain procedures have to be followed, for example, certain documentation has to be prepared for the Solicitor-General who decides, on behalf of the Attorney-General, whether to grant the request. - Again, however, the time required would depend on the nature of the request.

Where a request seeks evidence for use in later proceedings and no particular urgency attaches (for instance, there is no likelihood that evidence will be destroyed or eye witness evidence lost) then the response time may be extended. Where, by contrast, the matter is urgent, or where search warrants have to be executed or enquiries made in a timely fashion, the request will be dealt with as soon as it is reasonably possible and could well be completed within days or a week.

Counter-Terrorism Committee question : Sub-paragraph 3 (a)

According to the report, the New Zealand authorities are currently drafting an Interception Capability Bill, which will require all telecommunications network operators to make their networks interception-capable and will require others, such as Internet providers, to provide assistance to the police and the intelligence agencies, if called upon. Please provide the CTC with a copy of, or an internet reference for, this legislation.

The New Zealand Cabinet gave policy approvals for interception capability legislation in December 2001. The drafting of the Bill has now been completed but final Cabinet approvals and the introduction of the Bill to Parliament have been deferred due to the general election to be held on 27 July 2002. Accordingly, the Bill is not yet publicly available nor is there an internet reference available at this time, however both will be supplied at the first opportunity.

Counter-Terrorism Committee question : Sub-paragraph 3 (c)

The CTC would be grateful to know with which countries New Zealand has entered into bilateral treaties on extradition and mutual legal assistance.

Extradition

New Zealand modernised its extradition law in 1999. Before the Extradition Act 1999 was passed New Zealand needed an extradition treaty in order to extradite a person to a non-Commonwealth country. In the case of a Commonwealth country it was able to use its statutory regime, derived from the Fugitive Offenders Act 1881 (UK). The new Act has retained this regime for Commonwealth countries but gives greater flexibility to deal with requests from other countries.

While New Zealand will continue to enter extradition treaties from time to time with countries that require treaties to extradite to New Zealand and with which there is likely to be ongoing traffic, it can now deal with requests on an *ad hoc* basis, relying on its statutory regime (section 60). If a request is received from a country with which New Zealand does not have a formal extradition relationship it is open to the Minister of Justice to grant the request, taking into account various factors, such as whether the other country could reciprocate in similar circumstances. If the request relates to an offence in an international convention and both New Zealand and the other country are parties, that is regarded as sufficient reciprocity. Where the Minister allows the request to proceed, it is dealt with under Part 3 of the Act which requires the requesting country to provide sufficient evidence to show that a *prima facie* case exists against the person sought.

If New Zealand has an ongoing or more formal extradition relationship with a country, which may or may not be treaty-based, it can allow that country to use one of two simplified extradition procedures. For example, a simplified extradition process applies between New Zealand and Australia involving the "backing" of arrest warrants (which allows their direct enforcement in the other country). With this procedure, the requesting country does not have to provide evidence that a *prima facie* case exists and the court process required is therefore more straightforward.

New Zealand currently has extradition treaties with the following countries: the United States of America (1970), the Republic of Fiji (1992), Hong Kong Special Administrative Region of the People's Republic of China (1998), and the Republic of Korea (2001). In addition, New Zealand has succeeded to a number of British extradition treaties that date back to the 19th century. Attached, as Annex 1, is Schedule 1 of the Extradition Act, which lists the treaties which are still regarded as in force under New Zealand law.

Mutual Assistance in Criminal Matters

The Mutual Assistance in Criminal Matters Act 1992 allows for both the giving of certain types of assistance in criminal investigations and proceedings to other countries and the making of such requests by New Zealand. The original objective of the Act was to implement the mutual assistance provisions of the Commonwealth Scheme on Mutual Assistance and the UN Convention on Narcotic Drugs and Psychotropic Substances (1988). However, the Act is wider in scope and applies equally to both Commonwealth and non-Commonwealth countries and to a broad range of offending. The range of assistance includes taking evidence and enforcing orders relating to the proceeds of crime.

New Zealand has formalised its mutual assistance arrangements with the following countries by prescribing them under the Act. They fall into two categories:

- those with which New Zealand does not have a mutual assistance treaty: Australia (1993); Niue (1996); the United States of America (1998); the United Kingdom (1999); and Fiji (1999).
- those with which New Zealand has a mutual assistance treaty: Hong Kong (1999) and the Republic of Korea (2000). (It is currently in negotiations with Singapore.)

As with the Extradition Act, the Mutual Assistance Act allows for assistance to be given to a requesting country with which New Zealand has no treaty or other formal mutual assistance relationship. The Attorney-General may grant *ad hoc* requests for assistance. Before doing so the Attorney-General must consider the object of the Act (to facilitate the provision and obtaining, by New Zealand, of international assistance in criminal matters); whether that country would entertain a similar request by New Zealand; the seriousness of the offence; and any other matters the Attorney-General considers relevant. As with ad hoc requests under the Extradition Act, if the requesting country is a party to an international convention that contains a mutual assistance obligation and the request relates to an offence within the scope of that particular convention that is regarded as sufficient reciprocity.

Counter-Terrorism Committee question : Sub-paragraph 3 (d)

Please provide a progress report on the ratification processes as well as copies of, or internet references for, the implementing legislation for the international conventions and protocols relating to terrorism to which New Zealand is already a party.

As noted above New Zealand is currently party to 9 of the 13 international instruments on terrorism. The enactment of the Terrorism Suppression Bill will enable New Zealand to accede to the Bombings Convention (which it had not signed before the closing date specified in the Convention) and to ratify the Financing Convention (which New Zealand signed on 7 September 2000). (For further information on progress with this bill see the answer to sub-paragraph 2(c) above.)

A second anti-terrorism bill (the Terrorism (Counter Terrorism) Bill) is planned for later this year. This bill will also include the provisions needed to implement two other terrorism conventions to which New Zealand is not yet party: the Convention on the Physical Protection of Nuclear Material (1979) and the Convention on the Marking of Plastic Explosives (1991). Once both bills are passed New Zealand will be party to all the international instruments on terrorism.

New Zealand has recently enacted its legislation to implement the UN Convention against Transnational Organised Crime and its two Protocols on the Smuggling of Migrants and Trafficking in Persons. It expects to ratify all three instruments in the very near future. The measures taken to implement the Migrants and Trafficking Protocols are also relevant to the implementation of paragraph 2(g) of Resolution 1373. This involved a review of the offence regime in the Passports Act 1992. The Passports Amendment Act 2002 has overhauled the existing offences in the Act and created a number of new offences, all with higher penalties and aimed at combating the misuse of New Zealand travel documents.

Please see the answer to question 2 (c) above for the implementing legislation for the international conventions and protocols relating to terrorism to which New Zealand is already a party.

Counter-Terrorism Committee question : Sub-paragraph 3 (f)

Have the offences set forth in the relevant international conventions and protocols relating to terrorism been included as extraditable offences in the bilateral treaties to which New Zealand is party?

The approach taken by New Zealand is to include a provision in its implementing legislation that deems the offences in the particular international convention to be treated, for the purposes of New Zealand law, as extraditable offences in bilateral extradition treaties with other States Parties. The relevant provisions are sections 7 and 7A of the Aviation Crimes Act 1972 (as amended in 1999); section 14 of the Maritime Crimes Act 1999; and section 10 of the Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980.

Even in the absence of these provisions New Zealand would be able to grant a request for extradition relating to a terrorism offence, relying on the *ad hoc* request provisions of the Extradition Act described in the answer to the question under sub-paragraph 3(c) above.

New Zealand's preferred approach in its modern extradition treaties is not to list offences individually but rather to allow extradition for all offences that carry a certain minimum penalty. This allows extradition for a wide range of offences without the need to amend the treaty in order to add to the list, as amendments can often take a long time.

Counter-Terrorism Committee question : Sub-paragraph 4

Has New Zealand addressed any of the concerns expressed in paragraph 4 of the resolution?

As noted above the New Zealand Parliament recently enacted legislation to implement the UN Convention against Transnational Organised Crime and its two Protocols on the Smuggling of Migrants and Trafficking in Persons. It expects to ratify all three instruments in the very near future.

The legislation included an amendment to the Crimes Act 1961 to create two new offences of "smuggling migrants" and "trafficking in persons", both of which carry heavy maximum penalties of 20 years imprisonment and/or a $500,000 fine and are aimed at those in the business of people smuggling or trafficking. The Crimes Amendment Act also broadens the offence of participating in a criminal group to cover groups that operate transnationally and expanded the jurisdiction provisions for offences that fall within the Convention and Protocol to allow prosecution in New Zealand courts in a wider range of circumstances where the offence is committed wholly outside New Zealand territory.

Other measures include an amendment to the Customs and Excise Act 1996 to extend Customs' powers to intercept boats in the contiguous zone; changes to the Immigration Act 1987 to ensure that the necessary range of powers exists to deal with those who arrive in remote areas rather than at a Customs place; new Immigration Act offences with higher penalties; and new offences in the Passports Act 1992 to combat the misuse of New Zealand travel documents.

New Zealand has also been working through Pacific regional fora to support strong regional coordination to address transnational criminal issues such as international terrorism, drug trafficking, money laundering, weapons control and people smuggling.

Counter-Terrorism Committee question : 'Other matters'

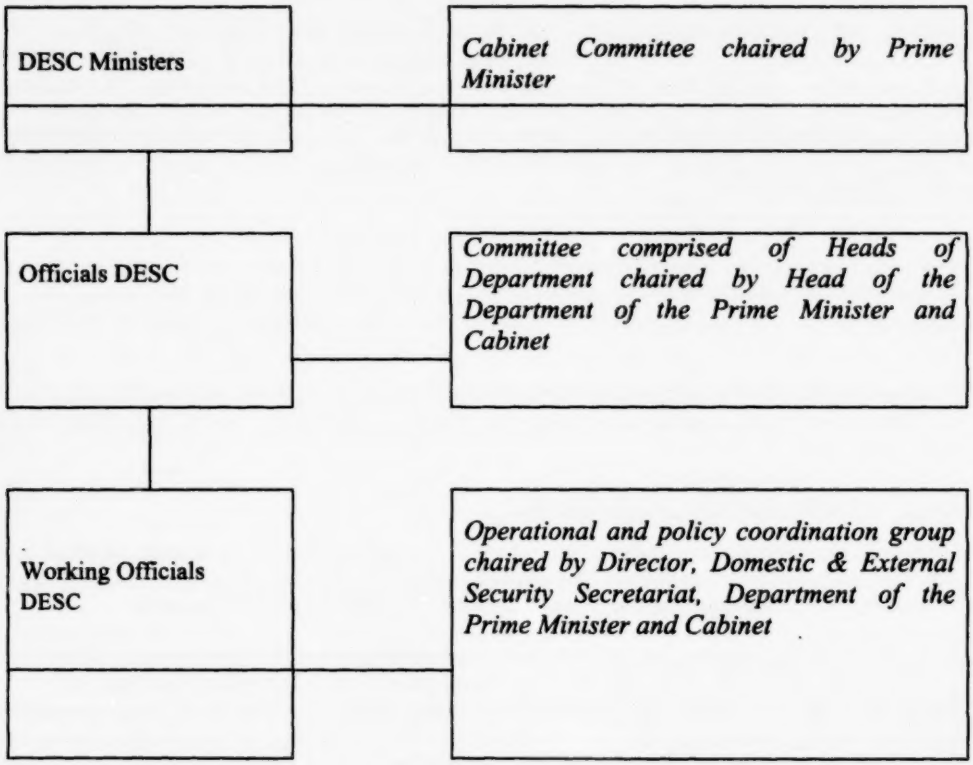
Could New Zealand please provide an organisational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the Resolution.

New Zealand has a relatively straightforward organisational structure/administrative machinery as central government agencies have total responsibility for policing, immigration, customs, taxation and financial supervision without any of the complexity faced by jurisdictions with federal and state levels of government.

The New Zealand organisational responsibilities for the areas identified by the Counter-Terrorism Committee are as follows:

Police	New Zealand Police Serious Fraud Office
Immigration Control	New Zealand Customs and New Zealand Immigration Service
Customs	New Zealand Customs Service
Taxation	Inland Revenue Department
Financial Supervision Authorities	Reserve Bank (supervision of banks); Ministry of Economic Development (regulation of business activity including competition); New Zealand Police (investigation of suspicious transactions and property reported by banks, financial institutions and others)

The coordination of the activities of these government agencies in relation to counter-terrorism and contributing to compliance with Resolution 1373 is accomplished through the Domestic and External Security Coordination system within the Department of the Prime Minister and Cabinet. Within this system individual departments retain their specific responsibilities/accountabilities to their government minister but do so in a framework that ensures activity is coordinated and contributes to whole-of-government outcomes. This coordination covers both operational and policy responses. The following organizational chart shows the concept of the DESC system:


DESC Ministers
Cabinet Committee chaired by Prime Minister
Officials DESC
Committee comprised of Heads of Department chaired by Head of the Department of the Prime Minister and Cabinet
Working Officials DESC
Operational and policy coordination group chaired by Director, Domestic & External Security Secretariat, Department of the Prime Minister and Cabinet

Specifically in relation to action taken by New Zealand to suppress terrorist financing, the administrative machinery is as follows:

Present Situation

Entities or individuals on terrorist lists promulgated by the UN are actioned by the Ministry of Foreign Affairs and Trade through the UN Sanctions (Terrorism Suppression and Afghanistan Measures) Regulations 2001 passed under the United Nations Act 1946. These regulations give effect to Resolution 1373 by requiring that the resolution's measures apply to the entities specified, currently those that have been designated under by the Security Council's Afghanistan Committee. The regulations are notified by the Reserve Bank and financial institutions are then obliged under the regulations to report any funds linked to terrorist organisations or individuals to the New Zealand Police who then trigger the freezing mechanism.

Situation Following Passage of the Terrorism Suppression Bill

The Terrorism Suppression Bill will enable the designation of organisations or individuals as terrorists and provide for the freezing of the assets of these terrorist entities once designated. The attached chart (Annex 2) outlines the administrative machinery that will be used to implement the designation procedure in the Bill once enacted. Following notification, financial institutions and others in possession of suspicious property will be obliged to report suspicions regarding property linked to the designated entities to the New Zealand Police who then trigger the property freezing mechanism.

Conclusion

New Zealand is committed to meeting its obligations under Resolution 1373. Much work has been done domestically to ensure that New Zealand complies with Resolution 1373 as illustrated by the counter-terrorism legislation currently before Parliament and the additional legislation that is planned. New Zealand also continues to contribute military, intelligence and political support to the international campaign against terrorism.